

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 08-0730 WHA

Plaintiff,

v.

**ORDER DENYING THE  
GOVERNMENT'S APPLICATION  
FOR LEAVE TO FILE MOTION  
FOR RECONSIDERATION**

MORIS FLORES, *et al.*,

Defendants.


The government applies for leave to file a motion for reconsideration of the September 22 order granting an evidentiary hearing regarding defendant Moris Flores' challenge to his warrantless arrest on May 17, 2008 (Dkt. No. 2322). This application is **DENIED**. A district court has broad discretion to choose to hold an evidentiary hearing, rather than rule solely on the written submissions by the parties. *See United States v. Batiste*, 868 F.2d 1089, 1091–92 (9th Cir. 1989). The government has failed to articulate an adequate basis for the undersigned to reconsider the decision to conduct an evidentiary hearing.

The November 10 evidentiary hearing will go forward as scheduled. To be clear, however, the complaining witnesses are not required to testify at the November 10 evidentiary hearing. As the September 22 order explained, if Officer Navarro's police report contained no misrepresentations, there was likely probable cause for Mr. Flores' warrantless arrest. The government, however, has the burden to show by a preponderance of evidence that there was probable cause. *United States v. Ladley*, 517 F.2d 1190, 1192 (9th Cir. 1975). Because there is clearly a dispute regarding whether the witnesses existed and/or whether a reasonable officer

1 would have doubted the witnesses' credibility at the time, an evidentiary hearing is warranted to  
2 obtain sworn testimony from Officer Navarro and/or Officer Poggio regarding the probable cause  
3 determination. After such testimony, the undersigned will be in a better position to determine  
4 whether there was probable cause for the warrantless arrest.

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6 **IT IS SO ORDERED.**

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8 Dated: October 4, 2010.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE